The suggestion at once presents itself that a trustee who has committed a breach of trust should not be permitted to recover the property, but that the grantee with notice be made a constructive trustee for the original *cestui que trust*, until a new trustee be appointed by the court. It is often said in decisions that the trustee files the bill solely in his representative capacity; but was it not in his representative capacity that he committed the breach of trust? "It is the duty of the trustee to repair his breach of trust;" yes, if the *cestui* files a bill against him for compensation; but does not justice demand in protection of the *cestui* that administration of the trust cannot be claimed as of right by one who has proved himself incapable of administration, and that the property be put into safer and more worthy hands? It is true that if the grantee give back the property to the original trustee the latter's duties revive; but this is very different from saying that such a wrongdoer may of right demand administration again. And if on the view of holding the grantee with notice a constructive trustee for the original *cestui*, the grantee would be liable for giving back the property to the original trustee, such a logical result does not seem too harsh. It may be futile, however, at the present date to deny that the wrongful trustee has a *locus pœnitentiæ*, and by a bill in equity may get back the trust property, which doctrine seems now well settled by authority. *Wetmore* v. *Porter*, 92 N. Y. 76.

If the view above taken were accepted, the principle advocated in *Willson* v. *Louisville Trust Co.* could not stand, for the original trustee simply dropping out, the statute would not run in favor of the constructive trustee while the *cestuis* were under disabilities. But even if *Wetmore* v. *Porter* be supported, it is still difficult to follow the reasoning of the Kentucky case on this point. The action which the original trustee would bring to recover the trust-res being in equity, even if the statutory period has run equity will not follow the analogy of the statute where it would work manifest injustice. It is questionable, then, if, in this case, equity should bar the *cestui que trusts* who were young infants or not yet born when the wrongful conveyance was made.

SPONTANEOUS COMBUSTION IN MARINE INSURANCE. — There have been few decided cases on the question of recovery on a marine insurance policy against fire and the perils of the sea for loss by spontaneous combustion. It seems to be well settled, however, that in such case the owner of the goods insured is barred the recovery of his insurance on the principle that spontaneous combustion is caused by an "inherent vice" in the goods themselves, not by any peril of the sea, and is therefore not within the terms of the policy. *Providence Washington Ins. Co.* v. *Adler*, 65 Md. 162. But if the owner of the goods is thus precluded from recovery, will the same principle of inherent vice prevent the owner of the vessel from recovering insurance on his freight which he has lost through spontaneous combustion, or a necessary discharge of the goods to prevent such disaster? This question was presented for the first time, it seems, in the recent English case of *The Knight of St. Michael*, [1898] P. 30. When half way through the voyage a part of the cargo of coal on the vessel became so heated as to cause imminent danger of spontaneous combustion, and the captain was obliged to discharge a portion of the cargo at an intermediate port. In an action by the owner of the vessel for the insurance on the freight thus lost to him, the court gave

judgment for the plaintiff. The greater part of the decision is taken up in showing that if the danger of spontaneous combustion was imminent the plaintiff should recover just as if spontaneous combustion had actually occurred; but the question whether the plaintiff could have recovered even if spontaneous combustion had in fact taken place seems scarcely to have been considered or argued. Indeed it was not disputed by defendant's counsel that if fire had actually broken out the plaintiff could recover directly from the defendants. The judge in substance said, "An action by the cargo-owners for insurance on their coal would have been defeated by the doctrine of inherent vice, but the position with regard to the freight was different. If the vessel had continued on her voyage without discharging the coal at Sydney, it was reasonably certain that spontaneous combustion would have ensued and the whole vessel and cargo been destroyed by fire."

It seems difficult to perceive any material difference between an action by the cargo-owners for the insurance on their coal and the action by the ship-owner for the insurance on his freight. In the one case, as in the other, the captain would be obliged to unload in order to save the ship and cargo. True, in the action by the ship owner the coal with its inherent vice is not furnished by the plaintiff as in the action by the owners of the cargo; but this fact is of no significance, for in both cases the terms of the insurance policy is against loss "by fire, jettisons, and perils of the sea," and the loss due to spontaneous combustion in each case would seem, on the doctrine of inherent vice, not to be covered by these terms. In this view, then, even if the coal had been actually destroyed by spontaneous combustion, the owner of the vessel should not have recovered insurance on his freight, and therefore he should not recover, further than in general average, for any loss incurred to prevent spontaneous combustion.

A PLEDGE WITHOUT TRANSFER OF POSSESSION. — The essential element of a pledge is doubtless the handing over of the possession to the pledgee; and strictly, when this possession is given up, the pledge terminates. Nevertheless, it is settled that if the pledgor regains possession by force, the pledge remains valid, on the fiction that the pledgor has not recovered his old possession, but has stolen the possession of the pledgee, and is holding, not as pledgor, but as thief. By an extension of this theory of changed capacity, it is now law that the pledgee may voluntarily intrust his possession to the pledgor as his agent for a temporary purpose, and still retain his lien. The Supreme Court of Kansas has recently taken a step further in the case of *Matthewson* v. *Caldwell*, 52 Pac. Rep. 104 (Kan. Sup. Ct.). The defendant in that case purchased a claim against the bank, and the bank agreed to pledge certain negotiable paper for its payment. The bank officers produced the paper in the presence of the defendant; and then, without actually transferring the physical possession, they agreed on behalf of the bank to accept it as a deposit from the defendant and to hold it for her as her agent. During this agency, the bank examiner made his rounds; and without the knowledge of the defendant the bank officials produced the pledged paper as bank assets, and were duly credited therewith. Subsequently the bank failed. The creditors claimed the pledged paper; but the court held, first, that the pledge was valid; and, second, that there was no estoppel on the part of the defendant to deny the ownership of the bank.